



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

March 6, 2019

The Honorable Steve Cohen
Member of Congress
Washington, DC 20515

The Honorable Tim Burchett
Member of Congress
Washington, DC 20515

Dear Congressman Cohen and Congressman Burchett:

Thank you for the opportunity to address your concerns.

On December 22, 2008, a TVA coal ash impoundment at Kingston failed resulting in the Kingston Ash Spill. TVA took responsibility, and TVA's response was swift and immediate. That same day, TVA notified the National Response Center and the U.S. Environmental Protection Agency (EPA), and TVA began working closely with EPA and the Tennessee Department of Environment & Conservation (TDEC) to develop a recovery project plan. TVA quickly mobilized its employees and a contractor workforce, and established a TVA Outreach Center in Kingston to provide information and accountability to the local community.

Throughout the recovery project, TVA put the safety of its employees and contractors first. Some examples include: site safety meetings held on a weekly basis to review safety measures and discuss safety needs and requirements, required pre-job briefings, encouraging workers to voice safety concerns through various avenues, and requiring TVA's contractors to comply with written site safety plans.

Some recovery project workers have sued Jacobs Engineering for ailments they believe are related to their work at the site. As a member of the local community and an employer for many of its residents, TVA is concerned by these claims. Years of scientific and regulatory review, including by EPA, have confirmed that coal ash should be deemed and regulated as nonhazardous.¹ The known trace elements, some of which can cause illness where sufficient concentration and exposure conditions exist, have not been thought to be present at high enough levels in coal ash to harm people given known exposure pathways and the safety measures required at the recovery project site.

TVA respects the plaintiffs' rights to have their claims heard and adjudicated. The Jacobs case, though, is at only a very preliminary stage. Neither the judge nor the jury have concluded that workers were sickened by exposure to coal ash.² In fact, the jury concluded only that Jacobs

¹ <https://www.govinfo.gov/content/pkg/FR-2015-04-17/pdf/2015-00257.pdf>

² Knoxville News Sentinel (KNS) has inaccurately reported otherwise, confusing the public. For example, two days before your incoming letter Jamie Satterfield reported that the jury concluded the workers' ailments "are caused" by coal ash. <https://www.knoxnews.com/story/news/crime/2019/02/05/coal-ash-spill-sick-workers-tva-liability-jacobs->

breached duties owed the plaintiffs by, among other things, failing to adhere to its contract with TVA, and that those breaches were *capable of* causing various ailments alleged by the plaintiffs. This Phase I verdict simply set the stage for Phase II of the trial, in which each plaintiff will have to prove that s/he was injured and that Jacobs' conduct caused the injury. All parties are entitled to their due process in that forum.

TVA is closely monitoring the outcome of the Jacobs litigation for multiple reasons: We care about the recovery project workers; we are committed to safe work standards and the safety of all employees and contractors at all TVA sites. We care about the safety performance of the contractors we hire. And we care about any potential impact that multiple plaintiffs' verdicts might have on ratepayers. The TVA-Jacobs contract contains indemnity provisions, which are common in the industry. Determining whether TVA will indemnify Jacobs is premature and ultimately will depend on the outcome of the lawsuits and many other factors. That TVA disclosed this potential long-term risk to its investors is not an admission of liability or financial responsibility.³

We hope this background is helpful and now turn to your specific questions:

1. Given the allegations of Jacobs Engineering's history of worker safety lawsuits and test tampering, why did TVA hire this company to clean up the site?

In January 2009, TVA issued a request for proposals for the potential award of a contract to assist with incident response, assessment, recovery, and remediation efforts at Kingston. Out of 14 respondents, TVA selected Jacobs. To TVA's knowledge, Jacobs did not have a history of safety lawsuits or test tampering. Jacobs is a multinational firm with over 70,000 employees in 400+ locations around the world. Jacobs was and is known for its work on

[engineering/2733792002/](https://www.knoxnews.com/story/news/crime/2017/08/24/tva-contractor-wants-ratepayers-pick-up-legal-tab-workers-coal-ash-lawsuit/574832001/). TVA immediately requested that KNS correct Ms. Satterfield's misstatement of the jury's verdict and not repeat the error in future stories. In its February 6, 2019 email to KNS, TVA explained, "The verdict, filed Nov. 17, 2018, and attached, states Jacob's breach of duty *was capable of causing* (NOTE: emphasis added for clarity) the following injuries or illnesses alleged by the plaintiffs..." Your letter cites this article as the source of your assertion that TVA's irresponsible actions lead to the illness of 400 workers and the deaths of 40 workers. TVA is not a party to these lawsuits, there was no claim or evidence at trial that TVA performed any such actions, and the causes of the deaths and illnesses have yet to be determined at trial.

³ Despite the sensational and erroneous statement in Ms. Satterfield's February 5, 2019 KNS article that TVA had for the first time publicly disclosed it had "made a deal that could put ratepayers on the financial hook for the misdeeds of [Jacobs]," Ms. Satterfield actually reported on the indemnity provision a year and a half earlier. "TVA contractor wants ratepayers to pick up legal tab in workers' coal ash lawsuit," August 24, 2017, <https://www.knoxnews.com/story/news/crime/2017/08/24/tva-contractor-wants-ratepayers-pick-up-legal-tab-workers-coal-ash-lawsuit/574832001/> ("Jacobs put TVA on notice as the legal claims began to mount that the firm intended to invoke a clause — known as an indemnity provision — in its contract with the utility...."). Furthermore, the entire contract between TVA and Jacobs, including the indemnity provision, was introduced into evidence during Phase I of the trial. And TVA transparently discussed this arrangement in its November 15, 2018 10K filing with the Securities and Exchange Commission: "While TVA is not a party to this litigation, TVA could be obligated to reimburse Jacobs for some amounts that Jacobs is required to pay as a result of this litigation...." But KNS's February 5, 2019 article mischaracterizes both the indemnity provision and the timing of its public disclosure: "TVA struck a deal to pay the legal bills for Jacobs to defend any lawsuits arising from the cleanup. ... But in its latest filing [1/31/2019] with the Securities and Exchange Commission, TVA is for the first time admitting publicly it also has a deal to cover any damages the sickened workers might recoup...." <https://www.knoxnews.com/story/news/crime/2019/02/05/coal-ash-spill-sick-workers-tva-liability-jacobs-engineering/2733792002/>. There is no independent "deal" to pay legal bills, only the indemnity provision, which was part of the contract reported on by Ms. Satterfield and introduced as evidence at the Jacobs trial, and specifically disclosed and described by TVA in 2018.

complex, environmental recovery projects, including multi-billion dollar projects for the federal government (e.g., K-25 and Y-12 at Oak Ridge).

As noted above, the contract contains an indemnity provision; such provisions are common in contracts like this, and Jacobs insisted on such a provision. TVA negotiated the best language it could in the situation, which required immediate action. The potential application and outcome of this provision is a complex legal matter that will not be decided until well into the future.

TVA's contract with Jacobs became effective on February 6, 2009. The first worker safety lawsuit filed against Jacobs in connection with the Kingston recovery project occurred in 2013, more than four years after TVA awarded the recovery project contract to Jacobs.

2. If TVA was aware of this history, what commitments did Jacobs Engineering provide to ensure that the company would be able to keep workers and the community safe?

As explained above, to TVA's knowledge, Jacobs did not have a history of safety lawsuits or test tampering. All recovery project contractors were required to comply with written site safety plans. TVA entered into its contract with Jacobs years before the worker suits were filed.

3. After it was uncovered that Jacobs Engineering supervisors admitted under oath that they lied to the estimated 900 workers employed at the height of the cleanup effort about the dangers of coal ash, why does TVA still have a \$200 million business relationship with Jacobs that involves worker safety?

TVA has carefully reviewed the transcript of the Phase I trial and did not find a Jacobs admission of lying to workers.⁴

In 2015 and 2016, TVA competitively bid construction services and engineering and field support services for which Jacobs Engineering was selected. Under these contracts, Jacobs is not responsible for day-to-day ash handling. Jacobs currently provides TVA with field expertise in the form of quality oversight, engineering services, project management support, and clerical support. Jacobs' performance has been satisfactory. While TVA has two contracts with Jacobs that have a collective maximum spend limit of \$200 million, TVA has only spent about \$10,000 on construction services and the anticipated total spend under these contracts is expected to be less than \$40 million.

TVA routinely reviews its contractors' safety records and takes appropriate actions based on known contractor safety performance and objective safety information available to TVA. TVA recognizes that troubling testimony was presented during Phase I of the trial regarding Jacobs' safety record at the recovery project. TVA also recognizes that Jacobs presented contrary evidence regarding its safety decisions and record. At this time, TVA believes a

⁴ The trial testimony simply does not support Ms. Satterfield's biased mischaracterization that "Jacobs supervisors have since admitted — under oath — they lied to the estimated 900 workers employed at the height of the cleanup effort about the dangers of coal ash...." <https://www.knoxnews.com/story/news/crime/2019/02/05/coal-ash-spill-sick-workers-tva-liability-jacobs-engineering/2733792002/>

continued relationship with Jacobs is appropriate. TVA will take this evidence into consideration when considering authorizing Jacobs to perform future work.

With respect to any ongoing work performed by Jacobs, this work must be performed safely and ethically.

Jacobs has been and continues to be one of the leading contractors employed by the federal government. The Top 100 Contractors Report (for 2017) from the Federal Procurement Data System shows Jacobs is a Top 100 federal contractor, with almost 2,000 procurement actions and contracts over \$1.2 billion.

4. It is alleged that TVA officials offered contractor bonuses to Jacobs Engineering to not file any reports of workers being harmed. Is there any truth to this allegation? Please explain.

This allegation from the plaintiffs, repeated in Ms. Satterfield's reporting and now here, is untrue. TVA did not offer any form of compensation or bonus to Jacobs for not reporting worker injuries. Jacobs' contract was amended in July 2009 to include a one-year incentive opportunity if Jacobs could meet various performance measures, including having no OSHA recordable incidents and zero environmental incidents each month. But Jacobs did not earn and TVA did not pay any safety/environmental incentive under that contract provision. These facts are clear in the Jacobs trial testimony and record.

5. On what basis did TVA representatives ascertain that the makeup of coal ash only had a handful of harmful substances, despite test results from independent testing by Duke University that showed the Kingston coal ash had radiation and two dozen toxic chemicals and metals in it?

The constituents of coal ash have been well-known for years, and TVA was transparent with this information throughout the Kingston recovery project. In partnership with TDEC, Tennessee Department of Health (TDH), and EPA, TVA's recovery plan was informed by the best available science about coal ash constituents and how to perform the recovery project work safely. And TVA and TDH shared that science, including possible health impacts, with the public – in fact, the public health assessment is still available on the TDH and Centers for Disease Control and Prevention's websites today.⁵

Similarly, the Administrative Order on Consent signed by TVA and EPA in May of 2009 acknowledged that the coal ash at Kingston contained a number of constituents including arsenic, beryllium, chromium, copper, lead, mercury, nickel, zinc, antimony, cadmium, silver, selenium, thallium, and vanadium oxide. And the Non-Time Critical Removal Action Engineering Evaluation Cost Analysis for the Dredge Cell that was available for public comment in January of 2010 included information summarizing data collected by TVA, EPA, and TDEC on the concentrations of metals and radioisotopes. These documents were also posted on publicly available websites by both EPA and TVA.⁶

⁵ <https://www.tn.gov/content/dam/tn/health/documents/healthy-places/appletree/pha-e-tva-kingston-fossil-plant-final.pdf>;

<https://www.atsdr.cdc.gov/hac/pha/tvakingstonfossilplant/tvakingstonfossilplantfinalpha09072010.pdf>

⁶ E.g., <http://152.87.4.98/kingston/eeca/NTCRA-EE-CA-2010-01-14.pdf>

There is no material difference between the data shared with the public by TVA, TDEC, and TDH and that in the referenced Duke study.

6. If TVA supervisors had knowledge of worker complaints of common symptoms of coal ash exposure, including skin rashes, breathing ailments, and migraines dating back to 2013, why were they not documented or acted upon?

There were hundreds of contract employees at the recovery project. Given the scope and scale of the project, there could certainly have been routine worker reports of various conditions. Workers would have reported those, including any they attributed to coal ash exposure, directly to their employers. TVA is not aware of any worker complaints being handled improperly by TVA.

7. What is the environmental impact of the recently closed coal ash storage areas at the former Allen Fossil Plant on the Memphis Sands [sic] aquifer?

There is no indication or evidence that the coal ash impoundments at the Allen Fossil Plant have impacted the quality of the groundwater in the Memphis aquifer. The U.S. Geological Survey (USGS), the University of Memphis Center for Applied Earth Science and Engineering Research, and TVA's contractor conducted water quality sampling of the Memphis aquifer in September 2017. Analysis of the groundwater samples was completed at the USGS National Water Quality Laboratory in Denver, Colorado. The groundwater samples were analyzed for a number of constituents, none of which were detected above maximum contaminant levels (MCLs) for drinking water set by EPA to ensure the protection of public health – in fact, the levels of constituents were well below applicable MCLs. For example, the levels of arsenic detected in the Memphis aquifer were between 0.08 to 0.14 µg/L, as compared to the MCL of 10 µg/L for arsenic. The USGS published a report in July 2018 that summarizes these water quality results.⁷

In addition to the joint sampling event conducted in September 2017, TVA's contractor also conducted two other water quality sampling events of the Memphis aquifer in October and November 2017, the results of which were consistent with the results from the September 2017 event and were published in a report submitted to the TDEC on March 6, 2018. As explained in that report, arsenic "was either not detected, or was detected at an estimated value below the laboratory reporting limit."

Mischaracterizations in recent KNS reporting notwithstanding, the recovery project was one of the most transparent efforts of its kind. For example, in its comments to EPA on proposed coal ash rules, TDEC cited an Oak Ridge Associated Universities and Vanderbilt University study of 200 Kingston residents that found "no adverse effects in human health due to coal ash exposure." (TDEC Comments are enclosed and highlighted for your reference.) In this one significant example, two regulatory bodies and two independent academic institutions looked closely at the circumstances and impacts of the ash spill and recovery, all in view of the public. Volumes more historical information is still available to the public via an internet search, e.g.: <https://www.epa.gov/tn/epa-response-kingston-tva-coal-ash-spill> (700+ pages of documents); www.fws.gov/cookeville/pdfs/TVA%20RCDF_Final_2015_0526.pdf (68-page TVA-TDEC-Fish & Wildlife Service report on natural resource impacts); and http://152.87.4.98/kingston/cap/TVA_Corrective_Action_Plan_Draft_D5.pdf (73-page Corrective Action Plan).

⁷ <https://pubs.er.usgs.gov/publication/ofr20181097>

TVA is committed to the health and safety of the Memphis community and the environment. To that end, TVA is working with TDEC to investigate the coal ash impoundments at the Allen Fossil Plant and to remediate contamination associated with the impoundments, which current data shows is confined to the shallower alluvial aquifer. TVA has committed to not use the production wells installed in the Memphis aquifer associated with the Allen Combined Cycle Plant unless and until additional data supports their safe use. TVA also recently announced its intent to prepare an environmental review pursuant to the National Environmental Policy Act (NEPA) to study various closure alternatives for the coal ash impoundments at Allen. TVA's preferred alternative is removal of the ash from the impoundments and restoration of the site for future potential economic development opportunities. NEPA requires TVA to complete this environmental review before making the final decision on closure method.

As demonstrated above, TVA has transparently shared relevant information with the public and worked closely with regulators and local communities. That behavior continued this week when last Friday we publicly posted the latest groundwater monitoring reports for each of our coal combustion residuals storage sites.⁸ Additionally, we are working with Roane County, Tennessee to accommodate their request for soil samples on TVA property near the Kingston plant that TVA allows the community to use for recreation. These are just two examples of our continued commitment to transparently fulfilling our mission of public service as an agency of the federal government.

Thank you again for the opportunity to address your concerns. We share your commitment to the people of the Tennessee Valley, and we will continue to serve them in ways that make life better: Providing reliable, affordable energy from an ever-cleaner portfolio, economic development to create jobs, and responsible stewardship of the Valley's significant natural resources.

Sincerely,



William D. Johnson
President and Chief Executive Officer

Enclosure

⁸ <https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals>. TVA will continue monitoring and we will take corrective actions, where necessary, per EPA's Coal Combustion Residuals Rule.